

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

NICHOLAS A. FLYNN, an individual,

Plaintiff,

vs.

COMMUNITY INTEGRATED  
SERVICES, INC., a Washington  
corporation; JOAN CARDWELL; JIM  
SHISSLER; LEAH HAYDON; and AJ  
ZACHMAN,

Defendants.

NO. 1:15-cv-03103-JPH

ORDER DENYING  
PLAINTIFF'S MOTION FOR  
PROTECTIVE ORDER

BEFORE THE COURT is Plaintiff's Motion for Protective Order. ECF No. 36. Defendants responded and Plaintiff replied. ECF No. 39, 40, 48, 49. After considering the motion,

IT IS ORDERED that the motion, **ECF No. 36, is denied.**

Plaintiff asks the Court "to quash Defendants' Subpoena Duces Tecum that were sent to: (a) Apria Healthcare; (b) Sleep Institute of Spokane, LLC; (c) Washington State Department of Labor and Industries; (d) Rockwood Clinic and

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2 (e) Bone & Joint Surgery Center.” Plaintiff “further moves that a protective order  
3 be entered that prevents Defendants from attempting to obtain medical records  
4 until Plaintiff has been given time to produce records in accordance with the  
5 FRCP.” ECF No. 36 at pp. 1-2. Plaintiff asserts a protective order should be  
6 entered that “prevents defendants from attempting to obtain plaintiff’s  
7 confidential medical records. Through proper discovery, Defendants can obtain  
8 non-privileged medical information.” ECF No. 36 at p. 4.

9 Defendants respond as follows:

10 1. Plaintiff failed to meet and confer pursuant to Federal Rule 26(c)(1)  
11 and Local Rule 37.1(b) prior to filing his motion and therefore, the motion is not  
12 properly before the Court. Plaintiff agrees the parties did not meet and confer but  
13 alleges the “onus of responsibility was on defense counsel to meet and confer  
14 before sending Notices of Intent to Serve Subpoenas along with the Subpoenas.”  
15 ECF No. 48 at page 2.

16 2. Plaintiff’s motion fails to meet the good cause requirement for a  
17 protective order under Fed. R. Civ. P. 26(c)(1). Additionally, Plaintiff fails to  
18 “submit a proposed protective order proposing that the Court to [sic] protect the  
19 disclosure of any of his medical records, or portions of his medical records.”  
20 Plaintiff filed a proposed order with his reply. ECF No. 49.

21 3. Plaintiff’s motion to quash is inapposite, and not properly before the  
22 Court because no subpoenas have been served in this case.

23 4. Plaintiff’s medical records are relevant and discoverable because  
24 Plaintiff has put his alleged medical conditions at the forefront of his claims  
25 against the Defendants in this lawsuit, particularly with respect to his mental  
health issues and sleep disorders. Plaintiff has also alleged he has atrial

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2 fibrillation and neurological and musculoskeletal problems which relate to his  
3 claims, making these conditions also relevant and discoverable. Plaintiff has also  
4 waived privilege under RCW 5.60.060(4)(b). Plaintiff alleges this statute does not  
5 apply to him because his is a wrongful termination, rather than physical injury or  
6 wrongful death, claim. ECF No. 48 at page 3, ¶4.

7 Defendants further allege medical providers should be allowed to produce  
8 all records in their possession regarding Plaintiff's "mental health issues, sleep  
9 disorders and other alleged medical conditions in this lawsuit. This information is  
10 relevant, discoverable and central to the issues of liability and damages in this  
11 case." Mental health issues include a record of treatment for depression and post-  
12 traumatic stress disorder. Plaintiff alleges his medical conditions limit his  
13 employment opportunities. [Plaintiff alleges his employment was wrongfully  
14 terminated. ECF No. 20 at ¶3.36 of p. 11.]

15 Defendants allege Plaintiff should be ordered to pay the Defendants'  
16 reasonable expenses and attorneys' fees under Federal Rule 37(a)(5)(B) because  
17 the motion is not substantially justified. ECF No. 39 at pp. 1-3, citing, in part,  
18 ECF No. 1 at ¶3.6 (original complaint) and ECF No. 20 at ¶¶3.44, 3.54, p. 17  
19 (amended complaint).

20 The Court finds Plaintiff's motion should be denied because Defendants  
21 are entitled to relevant and discoverable information relating to the alleged  
22 medical conditions that are essential to Plaintiff's claim for damages.

23 Plaintiff's motion to quash is denied as premature because no subpoenas  
24 have been served. Consistent with this Order, they may now be properly served.  
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2 Defendants' motion for fees and expenses is denied at this time. However,  
3 in the future, Plaintiff is cautioned that he must meet the requirements of meeting  
4 and conferring with counsel prior to filing motions.

5 DATED this 21st day of December, 2015.

6  
7 s/ James P. Hutton  
8 JAMES P. HUTTON  
9 U.S. MAGISTRATE JUDGE  
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